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QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE

New Zealand: Proposal for a draft convention on responsibility for attacks on United Nations personnel

1. New Zealand welcomes the endorsement in the report of the Secretary-General on the security of United Nations operations (A/48/349) of the conclusion of a new international convention in the area of protection of United Nations personnel.

2. Having considered the matter carefully since we first raised the issue of the safety of United Nations personnel in the Security Council in March, and bearing in mind discussions in the Special Committee on Peace-keeping Operations, we consider that the most effective measure that could be taken at this stage is to establish beyond doubt in international law that persons who attack United Nations personnel are individually responsible. The new convention would therefore establish that those who attack United Nations personnel, and those who order the commission of such attacks, commit a crime punishable by any country in which they may be found.

3. As part of New Zealand's ongoing contribution to the United Nations work in this area, we annex hereto a draft convention on responsibility for attacks on United Nations personnel for consideration under agenda item 152.

4. The draft convention focuses on the question of legal responsibility for attacks on United Nations and associated personnel. New Zealand does not claim that this is the only issue relating to peace-keeping personnel which requires attention. We recognize that the safety of United Nations personnel is a multifaceted issue which deserves further work in other bodies of the United Nations (as elaborated in the report of the Secretary-General). There may well be scope for further - and mutually reinforcing - work of a political kind, through either a draft declaration or resolution, somewhere other than the Sixth Committee.

5. The present draft convention is modelled largely on established precedents, including the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents 1/ and the International Convention against the Taking of Hostages. 2/

6. It is not the purpose of the present draft to duplicate rights and obligations which exist already in other areas of international law. The draft convention focuses on the safety of United Nations personnel engaged in operations established pursuant to a mandate approved by the Security Council.

7. There are justifiable arguments (as contained in the report of the Secretary-General) for exploring the possibility of extending the scope of the convention to cover personnel deployed by any organ of the United Nations. New Zealand could support the extension of the scope of the convention to all United Nations personnel, including those persons stationed in a host State by any other humanitarian organization or agency, whose activities are carried out in connection with a United Nations operation.

8. In some respects the draft is only a framework. Once its substance has been agreed, there will be a need to elaborate a preamble as well as those articles for which only a heading has so far been provided. With respect to dispute settlement, we would envisage inclusion of an effective compulsory procedure for the resolution of disputes. However, at this stage New Zealand would like to focus on the substance of the draft convention.

9. We look forward to further discussion on the draft within the Sixth Committee.

Notes

1/ Concluded at New York on 14 December 1973: General Assembly resolution 3166 (XXVIII), annex.

2/ Concluded at New York on 17 December 1979: General Assembly resolution 34/146, annex.

Draft Convention on Responsibility for Attacks on United Nations Personnel

Article 1

Definitions

1. "Alleged offender" means a person as to whom there is sufficient evidence to determine prima facie that that person has committed one or more of the crimes set out in article 5.

2. "Secretary-General" means the Secretary-General of the United Nations.

3. "Security Council" means the organ established pursuant to Article 7 of the Charter of the United Nations.

4. "Specialized agency" means an agency established by intergovernmental agreement as envisaged in Article 57 of the Charter of the United Nations.

5. "United Nations operation" means an operation established pursuant to a mandate approved by a resolution of the Security Council.

6. "United Nations personnel" means those persons in respect of whom this Convention applies in accordance with article 2.

Article 2

Application of Convention

This Convention shall apply in respect of:

(a) Persons deployed by the Secretary-General to participate in a United Nations operation, and includes:

(i) Military personnel;

(ii) Police personnel;

(iii) Associated civilian personnel;

(b) Persons deployed by the Secretary-General or a specialized agency or other organization or programme of the United Nations system to carry out activities in connection with a United Nations operation;

(c) Persons deployed by any other humanitarian organization or agency to carry out activities relating to a United Nations operation where such organization or agency is operating pursuant to an agreement with the Secretary-General.

Article 3

Duty to ensure the safety and security of United Nations personnel

1. States Parties shall recognize a duty to take all appropriate measures to ensure the safety and security of United Nations personnel. In particular, States Parties shall take all appropriate steps to protect United Nations personnel who are deployed in their territory from attacks or other acts of violence.

2. In circumstances where a State Party is unable to exercise jurisdiction over persons responsible for attacks on United Nations personnel deployed in their territory, it shall cooperate with other States Parties and with the Secretary-General to ensure that an alleged offender is dealt with in accordance with the provisions of this Convention.

Article 4

States to cooperate in preventing crimes against United Nations personnel

States Parties shall cooperate in the prevention of the crimes set out in article 5, particularly by:

(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories;

(b) Exchanging information and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 5

Crimes against United Nations personnel

1. The intentional commission of:

(a) A murder, kidnapping or other attack upon the person or liberty of any United Nations personnel;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations personnel likely to endanger his/her person or liberty;

(c) A threat to commit any such attack;

(d) An attempt to commit any such attack;

(e) An act constituting participation as an accomplice in any such attack, which includes organizing, or directing, or inciting others to commit any such attack,

shall be made by each State Party a crime under its national law.

2. Each State Party shall make these crimes punishable by appropriate penalties which take into account their grave nature.

3. Nothing in paragraphs 1 and 2 above shall derogate from the obligations of States Parties under international law to take all appropriate measures to prevent other attacks on the person, freedom or dignity of United Nations personnel.

Article 6

Establishment of jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 5 in the following cases:

(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State;

(c) When the crime is committed with respect to a national of that State, if that State considers it appropriate.

2. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 5 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 10 to any of the States referred to in paragraph 1 above.

3. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 7

Communication of information regarding alleged offenders

1. The State Party in which any of the crimes set out in article 5 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General and, directly or through the Secretary-General, to all other States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever any of the crimes set out in article 5 has been committed against any United Nations personnel, any State Party which has information concerning the victim and the circumstances of the crime shall endeavour to transmit it,

under the conditions provided for in its national law, fully and promptly to the Secretary-General and the interested State or States.

Article 8

Measures to ensure prosecution or extradition

1. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law so as to ensure that person's presence for the purpose of prosecution or extradition.

2. Measures taken in accordance with paragraph 1 above shall be notified without delay to the Secretary-General and, either directly or through the Secretary-General, to:

(a) The State where the crime was committed;

(b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person permanently resides;

(c) The State or States of which the victim is a national;

(d) All other States concerned;

(e) Any relevant specialized agency or other organization, programme or agency.

3. Any alleged offender shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, which that person requests and is willing to protect that person's rights;

(b) To be visited by a representative of that State.

Article 9

Prosecution of alleged offenders

The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State.

Article 10

Arrangements for extradition of alleged offenders

1. To the extent that the crimes set out in article 5 are not listed as extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Each of the crimes shall be treated, for the purpose of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 6, paragraph 1.

Article 11

Mutual assistance in criminal proceedings

1. States Parties shall afford each other the greatest measure of assistance in connection with criminal proceedings brought in respect of the crimes set out in article 5, including the supply of all evidence at their disposal necessary for the proceedings.

2. Paragraph 1 above shall not affect the obligations arising from the provisions of any other treaty, bilateral or multilateral, which governs or will govern, in whole or part, mutual assistance in criminal matters.

Article 12

Fair treatment for alleged offenders

Any person regarding whom proceedings are being carried out in connection with any of the crimes set out in article 5 shall be guaranteed fair treatment at all stages of the proceedings.

Article 13

Notification of outcome of proceedings

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General, who shall transmit the information to other States Parties.

Article 14

United Nations personnel to respect international humanitarian law

Nothing in this Convention shall be construed so as to derogate from the responsibility of United Nations personnel to respect international humanitarian law.

Article 15

Dissemination

The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction and to encourage the study thereof by the civilian population, so that the provisions of this Convention may become known to the armed forces and to the civilian population.

Article 16. Dispute settlement

Article 17. Signature/ratification/accession

Article 18. Entry into force

Article 19. Denunciation

Article 20. Authentic texts